

107TH CONGRESS  
1ST SESSION

# S. 1055

To require the consent of an individual prior to the sale and marketing of such individual's personally identifiable information, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JUNE 14, 2001

Mrs. FEINSTEIN introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To require the consent of an individual prior to the sale and marketing of such individual's personally identifiable information, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “Privacy Act of 2001”.

6       (b) TABLE OF CONTENTS.—The table of contents of  
7       this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—COMMERCIAL SALE AND MARKETING OF PERSONALLY  
IDENTIFIABLE INFORMATION

Sec. 101. Collection and distribution of personally identifiable information.

- Sec. 102. Enforcement.
- Sec. 103. Safe harbor.
- Sec. 104. Definitions.
- Sec. 105. Preemption.
- Sec. 106. Effective Date.

## TITLE II—LIMITATIONS ON USE OF SOCIAL SECURITY NUMBERS

- Sec. 201. Findings.
- Sec. 202. Prohibition of the display, sale, or purchase of social security numbers.
- Sec. 203. No prohibition with respect to public records.
- Sec. 204. Rulemaking authority of the Attorney General.
- Sec. 205. Treatment of social security numbers on government documents.
- Sec. 206. Limits on personal disclosure of a social security number for consumer transactions.
- Sec. 207. Extension of civil monetary penalties for misuse of a social security number.

## TITLE III—LIMITATIONS ON SALE AND SHARING OF NONPUBLIC PERSONAL FINANCIAL INFORMATION

- Sec. 301. Definition of sale.
- Sec. 302. Rules applicable to sale of nonpublic personal information.
- Sec. 303. Exceptions to sale prohibition.
- Sec. 304. Effective date.

## TITLE IV—LIMITATIONS ON THE PROVISION OF PROTECTED HEALTH INFORMATION

- Sec. 401. Definitions.
- Sec. 402. Prohibition against selling protected health information.
- Sec. 403. Authorization for sale of protected health information.
- Sec. 404. Prohibition against retaliation.
- Sec. 405. Prohibition against marketing protected health information.
- Sec. 406. Rule of construction.
- Sec. 407. Regulations.
- Sec. 408. Enforcement.

## TITLE V—DRIVER'S LICENSE PRIVACY

- Sec. 501. Driver's license privacy.

## TITLE VI—MISCELLANEOUS

- Sec. 601. Enforcement by State Attorneys General.
- Sec. 602. Federal injunctive authority.

1 **TITLE I—COMMERCIAL SALE**  
2 **AND MARKETING OF PERSON-**  
3 **ALLY IDENTIFIABLE INFOR-**  
4 **MATION**

5 **SEC. 101. COLLECTION AND DISTRIBUTION OF PERSON-**  
6 **ALLY IDENTIFIABLE INFORMATION.**

7 (a) PROHIBITION.—

8 (1) IN GENERAL.—It is unlawful for a commer-  
9 cial entity to collect personally identifiable informa-  
10 tion and disclose such information to any non-  
11 affiliated third party for marketing purposes or sell  
12 such information to any nonaffiliated third party,  
13 unless the commercial entity provides—

14 (A) notice to the individual to whom the  
15 information relates in accordance with the re-  
16 quirements of subsection (b); and

17 (B) an opportunity for such individual to  
18 restrict the disclosure or sale of such informa-  
19 tion.

20 (2) EXCEPTION.—A commercial entity may col-  
21 lect personally identifiable information and use such  
22 information to market to potential customers such  
23 entity's product.

24 (b) NOTICE.—

1           (1) IN GENERAL.—A notice under subsection  
2       (a) shall contain statements describing the following:

3           (A) The identity of the commercial entity  
4       collecting the personally identifiable informa-  
5       tion.

6           (B) The types of personally identifiable in-  
7       formation that are being collected on the indi-  
8       vidual.

9           (C) How the commercial entity may use  
10      such information.

11          (D) A description of the categories of po-  
12      tential recipients of such personally identifiable  
13      information.

14          (E) Whether the individual is required to  
15      provide personally identifiable information in  
16      order to do business with the commercial entity.

17          (F) How an individual may decline to have  
18      such personally identifiable information used or  
19      sold as described in subsection (a).

20       (2) TIME OF NOTICE.—Notice shall be conveyed  
21      prior to the sale or use of the personally identifiable  
22      information as described in subsection (a) in such a  
23      manner as to allow the individual a reasonable pe-  
24      riod of time to consider the notice and limit such  
25      sale or use.

1           (3) MEDIUM OF NOTICE.—The medium for pro-  
2       viding notice must be—

3           (A) the same medium in which the person-  
4           ally identifiable information is or will be col-  
5           lected, or a medium approved by the individual;  
6           or

7           (B) in the case of oral communication, no-  
8           tice may be conveyed orally or in writing.

9           (4) FORM OF NOTICE.—The notice shall be  
10       clear and conspicuous.

11       (c) OPT-OUT.—

12           (1) OPPORTUNITY TO OPT-OUT OF SALE OR  
13       MARKETING.—The opportunity provided to limit the  
14       sale of personally identifiable information to non-  
15       affiliated third parties or the disclosure of such in-  
16       formation for marketing purposes, shall be easy to  
17       use, accessible and available in the medium the in-  
18       formation is collected, or in a medium approved by  
19       the individual.

20           (2) DURATION OF LIMITATION.—An individ-  
21       ual's limitation on the sale or marketing of person-  
22       ally identifiable information shall be considered per-  
23       manent, unless otherwise specified by the individual.

24           (3) REVOCATION OF CONSENT.—After an indi-  
25       vidual grants consent to the use of that individual's

1 personally identifiable information, the individual  
2 may revoke the consent at any time, except to the  
3 extent that the commercial entity has taken action  
4 in reliance thereon. The commercial entity shall pro-  
5 vide the individual an opportunity to revoke consent  
6 that is easy to use, accessible, and available in the  
7 medium the information was or is collected.

8 (4) NOT APPLICABLE.—This section shall not  
9 apply to disclosure of personally identifiable  
10 information—

11 (A) that is necessary to facilitate a trans-  
12 action specifically requested by the consumer;

13 (B) is used for the sole purpose of facili-  
14 tating this transaction; and

15 (C) in which the entity receiving or obtain-  
16 ing such information is limited, by contract, to  
17 use such formation for the purpose of com-  
18 pleting the transaction.

19 **SEC. 102. ENFORCEMENT.**

20 (a) IN GENERAL.—In accordance with the provisions  
21 of this section, the Federal Trade Commission shall have  
22 the authority to enforce any violation of section 101 of  
23 this Act.

24 (b) VIOLATIONS.—The Federal Trade Commission  
25 shall treat a violation of section 101 as a violation of a

1 rule under section 18a(a)(1)(B) of the Federal Trade  
2 Commission Act (15 U.S.C. 57a(a)(1)(B)).

3 (c) TRANSFER OF ENFORCEMENT AUTHORITY.—The  
4 Federal Trade Commission shall promulgate rules in ac-  
5 cordance with section 553 of title 5, United States Code,  
6 allowing for the transfer of enforcement authority from  
7 the Federal Trade Commission to a Federal agency re-  
8 garding section 101 of this Act. The Federal Trade Com-  
9 mission may permit a Federal agency to enforce any viola-  
10 tion of section 101 if such agency submits a written re-  
11 quest to the Commission to enforce such violations and  
12 includes in such request—

13 (1) a description of the entities regulated by  
14 such agency that will be subject to the provisions of  
15 section 101;

16 (2) an assurance that such agency has suffi-  
17 cient authority over the entities to enforce violations  
18 of section 101; and

19 (3) a list of proposed rules that such agency  
20 shall use in regulating such entities and enforcing  
21 section 101.

22 (d) ACTIONS BY THE COMMISSION.—Absent transfer  
23 of enforcement authority to a Federal agency under sub-  
24 section (c), the Federal Trade Commission shall prevent  
25 any person from violating section 101 in the same manner,

1 by the same means, and with the same jurisdiction, pow-  
 2 ers, and duties as provided to such Commission under the  
 3 Federal Trade Commission Act (15 U.S.C. 41 et seq.).  
 4 Any entity that violates section 101 is subject to the pen-  
 5 alties and entitled to the privileges and immunities pro-  
 6 vided in such Act in the same manner, by the same means,  
 7 and with the same jurisdiction, power, and duties under  
 8 such Act.

9 (e) RELATIONSHIP TO OTHER LAWS.—

10 (1) COMMISSION AUTHORITY.—Nothing con-  
 11 tained in this title shall be construed to limit author-  
 12 ity provided to the Commission under any other law.

13 (2) COMMUNICATIONS ACT.—Nothing in section  
 14 101 requires an operator of a website to take any  
 15 action that is inconsistent with the requirements of  
 16 section 222 or 631 of the Communications Act of  
 17 1934 (47 U.S.C. 222 and 5551).

18 (3) OTHER ACTS.—Nothing in this title is in-  
 19 tended to affect the applicability or the enforce-  
 20 ability of any provision of, or any amendment made  
 21 by—

22 (A) the Children’s Online Privacy Protec-  
 23 tion Act of 1998 (15 U.S.C. 6501 et seq.);

24 (B) title V of the Gramm-Leach-Bliley Act;



1 (C) the Health Insurance Portability and  
2 Accountability Act of 1996; or

3 (D) the Fair Credit Reporting Act.

4 (f) PUBLIC RECORDS.—Nothing in this title shall be  
5 construed to restrict commercial entities from obtaining  
6 or disclosing personally identifying information from pub-  
7 lic records.

8 (g) CIVIL PENALTIES.—In addition to any other pen-  
9 alty applicable to a violation of section 101(a), a penalty  
10 of up to \$25,000 may be issued for each violation.

11 (h) ENFORCEMENT REGARDING PROGRAMS.—

12 (1) IN GENERAL.—A Federal agency or depart-  
13 ment providing financial assistance to any entity re-  
14 quired to comply with section 101 of this Act shall  
15 issue regulations requiring that such entity comply  
16 with such section or forfeit some or all of such as-  
17 sistance. Such regulations shall prescribe sanctions  
18 for noncompliance, require that such department or  
19 agency provide notice of failure to comply with such  
20 section prior to any action being taken against such  
21 recipient, and require that a determination be made  
22 prior to any action being taken against such recipi-  
23 ent that compliance cannot be secured by voluntary  
24 means.

1           (2) FEDERAL FINANCIAL ASSISTANCE.—The  
 2           term “Federal financial assistance” means assist-  
 3           ance through a grant, cooperative agreement, loan,  
 4           or contract other than a contract of insurance or  
 5           guaranty.

6 **SEC. 103. SAFE HARBOR.**

7           A commercial entity may not be held to have violated  
 8           any provision of this title if such entity complies with self-  
 9           regulatory guidelines that—

10           “(1) are issued by seal programs or representa-  
 11           tives of the marketing or online industries or by any  
 12           other person; and

13           “(2) are approved by the Federal Trade Com-  
 14           mission, after public comment has been received on  
 15           such guidelines by the Commission, as meeting the  
 16           requirements of this title.

17 **SEC. 104. DEFINITIONS.**

18           In this title:

19           (1) COMMERCIAL ENTITY.—The term “commer-  
 20           cial entity”—

21           (A) means any person offering products or  
 22           services involving commerce—

23           (i) among the several States or with 1  
 24           or more foreign nations;

1 (ii) in any territory of the United  
2 States or in the District of Columbia, or  
3 between any such territory and—

4 (I) another such territory; or

5 (II) any State or foreign nation;

6 or

7 (iii) between the District of Columbia  
8 and any State, territory, or foreign nation;  
9 and

10 (B) does not include—

11 (i) any nonprofit entity that would  
12 otherwise be exempt from coverage under  
13 section 5 of the Federal Trade Commission  
14 Act (15 U.S.C. 45);

15 (ii) any financial institution that is  
16 subject to title V of the Gramm-Leach-Bliley  
17 Act (15 U.S.C. 6801 et seq.); or

18 (iii) any group health plan, health in-  
19 surance issuer, or other entity that is sub-  
20 ject to the Health Insurance Portability  
21 and Accountability Act of 1996 (42 U.S.C.  
22 201 note).

23 (2) COMMISSION.—The term “Commission”  
24 means the Federal Trade Commission.

1           (3) INDIVIDUAL.—The term “individual” means  
2           a person whose personally identifying information  
3           has been, is, or will be collected by a commercial en-  
4           tity.

5           (4) MARKETING.—The term “marketing”  
6           means to make a communication about a product or  
7           service a purpose of which is to encourage recipients  
8           of the communication to purchase or use the product  
9           or service.

10          (5) MEDIUM.—The term “medium” means any  
11          channel or system of communication including oral,  
12          written, and online communication.

13          (6) NONAFFILIATED THIRD PARTY.—The term  
14          “nonaffiliated third party” means any entity that is  
15          not related by common ownership or affiliated by  
16          corporate control with, the commercial entity, but  
17          does not include a joint employee of such institution.

18          (7) PERSONALLY IDENTIFIABLE INFORMA-  
19          TION.—The term “personally identifiable informa-  
20          tion” means individually identifiable information  
21          about the individual that is collected including—

22                (A) a first, middle, or last name, whether  
23                given at birth or adoption, assumed, or legally  
24                changed;

1 (B) a home or other physical address, in-  
2 cluding the street name, zip code, and name of  
3 a city or town;

4 (C) an e-mail address;

5 (D) a telephone number;

6 (E) a photograph or other form of visual  
7 identification;

8 (F) a birth date, birth certificate number,  
9 or place of birth for that person; or

10 (G) information concerning the individual  
11 that is combined with any other identifier in  
12 this paragraph.

13 (8) SALE; SELL; SOLD.—The terms “sale”,  
14 “sell”, and “sold”, with respect to personally identi-  
15 fiable information, mean the exchanging of such in-  
16 formation for any thing of value, directly or indi-  
17 rectly, including the licensing, bartering, or renting  
18 of such information.

19 (9) WRITING.—The term “writing” means writ-  
20 ing in either a paper-based or computer-based form,  
21 including electronic and digital signatures.

22 **SEC. 105. PREEMPTION.**

23 The provisions of this title shall supersede any statu-  
24 tory and common law of States and their political subdivi-

1 sions insofar as that law may now or hereafter relate to  
2 the—

- 3 (1) collection and disclosure of personally iden-  
4 tifiable information for marketing purposes; and
- 5 (2) collection and sale of personally identifiable  
6 information.

7 **SEC. 106. EFFECTIVE DATE.**

8 This title and the amendments made by this title  
9 shall take effect 1 year after the date of enactment of this  
10 Act.

11 **TITLE II—LIMITATIONS ON USE**  
12 **OF SOCIAL SECURITY NUMBERS**

13 **SEC. 201. FINDINGS.**

14 Congress makes the following findings:

15 (1) The inappropriate display, sale, or purchase  
16 of social security numbers has contributed to a  
17 growing range of illegal activities, including fraud,  
18 identity theft, and, in some cases, stalking and other  
19 violent crimes.

20 (2) While financial institutions, health care pro-  
21 viders, and other entities have often used social se-  
22 curity numbers to confirm the identity of an indi-  
23 vidual, the general display to the public, sale, or pur-  
24 chase of these numbers has been used to commit

1 crimes, and also can result in serious invasions of in-  
2 dividual privacy.

3 (3) The Federal Government requires virtually  
4 every individual in the United States to obtain and  
5 maintain a social security number in order to pay  
6 taxes, to qualify for social security benefits, or to  
7 seek employment. An unintended consequence of  
8 these requirements is that social security numbers  
9 have become tools that can be used to facilitate  
10 crime, fraud, and invasions of the privacy of the in-  
11 dividuals to whom the numbers are assigned. Be-  
12 cause the Federal Government created and main-  
13 tains this system, and because the Federal Govern-  
14 ment does not permit individuals to exempt them-  
15 selves from those requirements, it is appropriate for  
16 the Federal Government to take steps to stem the  
17 abuse of this system.

18 (4) A social security number does not contain,  
19 reflect, or convey any publicly significant informa-  
20 tion or concern any public issue. The display, sale,  
21 or purchase of such numbers in no way facilitates  
22 uninhibited, robust, and wide-open public debate,  
23 and restrictions on such display, sale, or purchase  
24 would not affect public debate.

1           (5) No one should seek to profit from the dis-  
 2           play, sale, or purchase of social security numbers in  
 3           circumstances that create a substantial risk of phys-  
 4           ical, emotional, or financial harm to the individuals  
 5           to whom those numbers are assigned.

6           (6) Consequently, this Act offers each indi-  
 7           vidual that has been assigned a social security num-  
 8           ber necessary protection from the display, sale, and  
 9           purchase of that number in any circumstance that  
 10          might facilitate unlawful conduct.

11 **SEC. 202. PROHIBITION OF THE DISPLAY, SALE, OR PUR-**  
 12 **CHASE OF SOCIAL SECURITY NUMBERS.**

13          (a) PROHIBITION.—

14           (1) IN GENERAL.—Chapter 47 of title 18,  
 15          United States Code, is amended by inserting after  
 16          section 1028 the following:

17 **“§ 1028A. Prohibition of the display, sale, or purchase**  
 18 **of social security numbers**

19          “(a) DEFINITIONS.—In this section:

20           “(1) DISPLAY.—The term ‘display’ means to in-  
 21          tentionally communicate or otherwise make available  
 22          (on the Internet or in any other manner) to the gen-  
 23          eral public an individual’s social security number.



1           “(2) PERSON.—The term ‘person’ means any  
2           individual, partnership, corporation, trust, estate, co-  
3           operative, association, or any other entity.

4           “(3) PURCHASE.—The term ‘purchase’ means  
5           providing directly or indirectly, anything of value in  
6           exchange for a social security number.

7           “(4) SALE.—The term ‘sale’ means obtaining,  
8           directly or indirectly, anything of value in exchange  
9           for a social security number.

10          “(5) STATE.—The term ‘State’ means any  
11          State of the United States, the District of Columbia,  
12          Puerto Rico, the Northern Mariana Islands, the  
13          United States Virgin Islands, Guam, American  
14          Samoa, and any territory or possession of the  
15          United States.

16          “(b) LIMITATION ON DISPLAY.—Except as provided  
17          in section 1028B, no person may display any individual’s  
18          social security number to the general public without the  
19          affirmatively expressed consent of the individual.

20          “(c) LIMITATION ON SALE OR PURCHASE.—Except  
21          as otherwise provided in this section, no person may sell  
22          or purchase any individual’s social security number with-  
23          out the affirmatively expressed consent of the individual.

24          “(d) PROHIBITION OF WRONGFUL USE AS PER-  
25          SONAL IDENTIFICATION NUMBER.—No person may obtain

1 any individual's social security number for purposes of lo-  
 2 cating or identifying an individual with the intent to phys-  
 3 ically injure, harm, or use the identity of the individual  
 4 for any illegal purpose.

5 “(e) PREREQUISITES FOR CONSENT.—In order for  
 6 consent to exist under subsection (b) or (c), the person  
 7 displaying or seeking to display, selling or attempting to  
 8 sell, or purchasing or attempting to purchase, an individ-  
 9 ual's social security number shall—

10 “(1) inform the individual of the general pur-  
 11 pose for which the number will be used, the types of  
 12 persons to whom the number may be available, and  
 13 the scope of transactions permitted by the consent;  
 14 and

15 “(2) obtain the affirmatively expressed consent  
 16 (electronically or in writing) of the individual.

17 “(f) EXCEPTIONS.—

18 “(1) IN GENERAL.—Except as provided in sub-  
 19 section (d), nothing in this section shall be construed  
 20 to prohibit or limit the display, sale, or purchase of  
 21 a social security number—

22 “(A) permitted, required, or excepted, ex-  
 23 pressly or by implication, under section  
 24 205(c)(2), 1124A(a)(3), or 1141(c) of the So-  
 25 cial Security Act (42 U.S.C. 405(c)(2), 1320a–

1 3a(a)(3), and 1320b–11(c)), section 7(a)(2) of  
2 the Privacy Act of 1974 (5 U.S.C. 552a note),  
3 section 6109(d) of the Internal Revenue Code  
4 of 1986, or section 6(b)(1) of the Professional  
5 Boxing Safety Act of 1996 (15 U.S.C.  
6 6305(b)(1));

7 “(B) for a public health purpose, including  
8 the protection of the health or safety of an indi-  
9 vidual in an emergency situation;

10 “(C) for a national security purpose;

11 “(D) for a law enforcement purpose, in-  
12 cluding the investigation of fraud, as required  
13 under subchapter II of chapter 53 of title 31,  
14 United States Code, and chapter 2 of title I of  
15 Public Law 91–508 (12 U.S.C. 1951–1959),  
16 and the enforcement of a child support obliga-  
17 tion;

18 “(E) if the display, sale, or purchase of the  
19 number is for a business-to-business use, in-  
20 cluding, but not limited to—

21 “(i) the prevention of fraud (including  
22 fraud in protecting an employee’s right to  
23 employment benefits);

24 “(ii) the facilitation of credit checks  
25 or the facilitation of background checks of

1 employees, prospective employees, and vol-  
2 unteers;

3 “(iii) compliance with any require-  
4 ment related to the social security program  
5 established under title II of the Social Se-  
6 curity Act (42 U.S.C. 401 et seq.); or

7 “(iv) the retrieval of other information  
8 from, or by, other businesses, commercial  
9 enterprises, or private nonprofit organiza-  
10 tions,

11 except that, nothing in this subparagraph shall  
12 be construed as permitting a professional or  
13 commercial user to display or sell a social secu-  
14 rity number to the general public;

15 “(F) if the transfer of such a number is  
16 part of a data matching program under the  
17 Computer Matching and Privacy Protection Act  
18 of 1988 (5 U.S.C. 552a note) or any similar  
19 computer data matching program involving a  
20 Federal, State, or local agency; or

21 “(G) if such number is required to be sub-  
22 mitted as part of the process for applying for  
23 any type of Federal, State, or local government  
24 benefit or program.

1       “(g) CIVIL ACTION IN UNITED STATES DISTRICT  
2 COURT; DAMAGES; ATTORNEY’S FEES AND COSTS.—

3               “(1) IN GENERAL.—Any individual aggrieved  
4 by any act of any person in violation of this section  
5 may bring a civil action in a United States district  
6 court to recover—

7               “(A) such preliminary and equitable relief  
8 as the court determines to be appropriate; and

9               “(B) the greater of—

10               “(i) actual damages;

11               “(ii) liquidated damages of \$2,500; or

12               “(iii) in the case of a violation that  
13 was willful and resulted in profit or mone-  
14 tary gain, liquidated damages of \$10,000.

15               “(2) STATUTE OF LIMITATIONS.—No action  
16 may be commenced under this subsection more than  
17 3 years after the date on which the violation was or  
18 should reasonably have been discovered by the ag-  
19 grieved individual.

20               “(3) NONEXCLUSIVE REMEDY.—The remedy  
21 provided under this subsection shall be in addition to  
22 any other remedy available to the individual.

23       “(h) CIVIL PENALTIES.—

24               “(1) IN GENERAL.—Any person who the Attor-  
25 ney General determines has violated this section

1 shall be subject, in addition to any other penalties  
2 that may be prescribed by law—

3 “(A) to a civil penalty of not more than  
4 \$5,000 for each such violation; and

5 “(B) to a civil penalty of not more than  
6 \$50,000, if the violations have occurred with  
7 such frequency as to constitute a general busi-  
8 ness practice.

9 “(2) DETERMINATION OF VIOLATIONS.—Any  
10 willful violation committed contemporaneously with  
11 respect to the social security numbers of 2 or more  
12 individuals by means of mail, telecommunication, or  
13 otherwise, shall be treated as a separate violation  
14 with respect to each such individual.

15 “(3) ENFORCEMENT PROCEDURES.—The provi-  
16 sions of section 1128A of the Social Security Act  
17 (42 U.S.C. 1320a–7a), other than subsections (a),  
18 (b), (f), (h), (i), (j), (m), and (n) and the first sen-  
19 tence of subsection (c) of such section, and the pro-  
20 visions of subsections (d) and (e) of section 205 of  
21 such Act (42 U.S.C. 405) shall apply to a civil pen-  
22 alty under this subsection in the same manner as  
23 such provisions apply to a penalty or proceeding  
24 under section 1128A(a) of such Act (42 U.S.C.  
25 1320a–7a(a)), except that, for purposes of this para-

1 graph, any reference in section 1128A of such Act  
 2 (42 U.S.C. 1320a–7a) to the Secretary shall be  
 3 deemed to be a reference to the Attorney General.”.

4 (2) CONFORMING AMENDMENT.—The chapter  
 5 analysis for chapter 47 of title 18, United States  
 6 Code, is amended by inserting after the item relating  
 7 to section 1028 the following:

“1028A. Prohibition of the display, sale, or purchase of social security num-  
 bers.”.

8 (b) CRIMINAL SANCTIONS.—Section 208(a) of the  
 9 Social Security Act (42 U.S.C. 408(a)) is amended—

10 (1) in paragraph (8), by inserting “or” after  
 11 the semicolon; and

12 (2) by inserting after paragraph (8) the fol-  
 13 lowing new paragraphs:

14 “(9) except as provided in paragraph (5) of sec-  
 15 tion 1028A(a) of title 18, United States Code, know-  
 16 ingly and willfully displays, sells, or purchases (as  
 17 those terms are defined in paragraph (1) of such  
 18 section) any individual’s social security number (as  
 19 defined in such paragraph) without the affirmatively  
 20 expressed consent of that individual after having met  
 21 the prerequisites for consent under paragraph (4) of  
 22 such section, electronically or in writing, with re-  
 23 spect to that individual; or

1           “(10) obtains any individual’s social security  
 2           number for the purpose of locating or identifying the  
 3           individual with the intent to injure or to harm that  
 4           individual, or to use the identity of that individual  
 5           for an illegal purpose;”.

6           (c) EFFECTIVE DATE.—Section 1028A of title 18,  
 7           United States Code (as added by subsection (a)), and sec-  
 8           tion 208 of the Social Security Act (42 U.S.C. 408) (as  
 9           amended by subsection (b)) shall take effect 30 days after  
 10          the date on which the final regulations promulgated under  
 11          section 204(b) are published in the Federal Register.

12   **SEC. 203. NO PROHIBITION WITH RESPECT TO PUBLIC**  
 13                           **RECORDS.**

14          (a) PUBLIC RECORDS EXCEPTION.—

15               (1) IN GENERAL.—Chapter 47 of title 18,  
 16          United States Code (as amended by section  
 17          202(a)(1)), is amended by inserting after section  
 18          1028A the following:

19   **“§ 1028B. No prohibition of the display, sale, or pur-**  
 20                           **chase of social security numbers included**  
 21                           **in public records**

22          “(a) IN GENERAL.—Nothing in section 1028A shall  
 23          be construed to prohibit or limit the display, sale, or pur-  
 24          chase of any public record which includes a social security  
 25          number that—



1           “(1) is incidentally included in a public record,  
2           as defined in subsection (d);

3           “(2) is intended to be purchased, sold, or dis-  
4           played pursuant to an exception contained in section  
5           1028A(f);

6           “(3) is intended to be purchased, sold, or dis-  
7           played pursuant to the consent provisions of sub-  
8           sections (b), (c), and (e) of section 1028A; or

9           “(4) includes a redaction of the nonincidental  
10          occurrences of the social security numbers when sold  
11          or displayed to members of the general public.

12          “(b) AGENCY REQUIREMENTS.—Each agency in pos-  
13          session of documents that contain social security numbers  
14          which are nonincidental, shall, with respect to such  
15          documents—

16               “(1) ensure that access to such numbers is re-  
17               stricted to persons who may obtain them in accord-  
18               ance with applicable law;

19               “(2) require an individual who is not exempt  
20               under section 1028A(f) to provide the social security  
21               number of the person who is the subject of the docu-  
22               ment before making such document available; or

23               “(3) redact the social security number from the  
24               document prior to providing a copy of the requested  
25               document to an individual who is not exempt under

1       section 1028A(f) and who is unable to provide the  
 2       social security number of the person who is the sub-  
 3       ject of the document.

4       “(c) RULE OF CONSTRUCTION.—Nothing in this sec-  
 5       tion shall be used as a basis for permitting or requiring  
 6       a State or local government entity or other repository of  
 7       public documents to expand or to limit access to docu-  
 8       ments containing social security numbers to entities cov-  
 9       ered by the exception in section 1028A(f).

10       “(d) DEFINITIONS.—In this section:

11               “(1) INCIDENTAL.—The term ‘incidental’  
 12       means that the social security number is not rou-  
 13       tinely displayed in a consistent and predictable man-  
 14       ner on the public record by a government entity,  
 15       such as on the face of a document.

16               “(2) PUBLIC RECORD.—The term ‘public  
 17       record’ means any item, collection, or grouping of in-  
 18       formation about an individual that is maintained by  
 19       a Federal, State, or local government entity and that  
 20       is made available to the public.”.

21               “(2) CONFORMING AMENDMENT.—The chapter  
 22       analysis for chapter 47 of title 18, United States  
 23       Code (as amended by section 202(a)(2)), is amended  
 24       by inserting after the item relating to section 1028A  
 25       the following:

“1028B. No prohibition of the display, sale, or purchase of social security numbers included in public records.”.

1 **SEC. 204. RULEMAKING AUTHORITY OF THE ATTORNEY**

2 **GENERAL.**

3 (a) IN GENERAL.—Except as provided in subsection  
4 (b), the Attorney General may prescribe such rules and  
5 regulations as the Attorney General deems necessary to  
6 carry out the provisions of section 202.

7 (b) BUSINESS-TO-BUSINESS COMMERCIAL DISPLAY,  
8 SALE, OR PURCHASE RULEMAKING.—

9 (1) IN GENERAL.—Not later than 1 year after  
10 the date of enactment of this Act, the Attorney Gen-  
11 eral, in consultation with the Commissioner of Social  
12 Security, the Federal Trade Commission, and such  
13 other Federal agencies as the Attorney General de-  
14 termines appropriate, may conduct such rulemaking  
15 procedures in accordance with subchapter II of  
16 chapter 5 of title 5, United States Code, as are nec-  
17 essary to promulgate regulations to implement and  
18 clarify the business-to-business provisions pertaining  
19 to section 1028A(f)(1)(E) of title 18, United States  
20 Code (as added by section 202(a)(1)). The Attorney  
21 General shall consult with other agencies to ensure,  
22 where possible, that these provisions are consistent  
23 with other privacy laws, including title V of the  
24 Gramm-Leach-Bliley Act (15 U.S.C. 6801 et seq.).

1           (2) FACTORS TO BE CONSIDERED.—In promul-  
2           gating the regulations required under paragraph (1),  
3           the Attorney General shall, at a minimum, consider  
4           the following factors:

5                   (A) The benefit to a particular business  
6                   practice and to the general public of the sale or  
7                   purchase of an individual's social security num-  
8                   ber.

9                   (B) The risk that a particular business  
10                  practice will promote the use of the social secu-  
11                  rity number to commit fraud, deception, or  
12                  crime.

13                  (C) The presence of adequate safeguards  
14                  to prevent the misappropriation of social secu-  
15                  rity numbers by the general public, while per-  
16                  mitting internal business uses of such numbers.

17                  (D) The implementation of procedures to  
18                  prevent identity thieves, stalkers, and others  
19                  with ill intent from posing as legitimate busi-  
20                  nesses to obtain social security numbers.

21 **SEC. 205. TREATMENT OF SOCIAL SECURITY NUMBERS ON**  
22 **GOVERNMENT DOCUMENTS.**

23           (a) PROHIBITION OF USE OF SOCIAL SECURITY AC-  
24           COUNT NUMBERS ON CHECKS ISSUED FOR PAYMENT BY  
25           GOVERNMENTAL AGENCIES.—

1           (1) IN GENERAL.—Section 205(c)(2)(C) of the  
 2       Social Security Act (42 U.S.C. 405(c)(2)(C)) is  
 3       amended by adding at the end the following new  
 4       clause:

5       “(x) No Federal, State, or local agency may display  
 6       the social security account number of any individual, or  
 7       any derivative of such number, on any check issued for  
 8       any payment by the Federal, State, or local agency.”.

9           (2) EFFECTIVE DATE.—The amendment made  
 10      by this subsection shall apply with respect to viola-  
 11      tions of section 205(c)(2)(C)(x) of the Social Secu-  
 12      rity Act (42 U.S.C. 405(c)(2)(C)(x)), as added by  
 13      paragraph (1), occurring after the date that is 3  
 14      years after the date of enactment of this Act.

15      (b) PROHIBITION OF APPEARANCE OF SOCIAL SECU-  
 16      RITY ACCOUNT NUMBERS ON DRIVER’S LICENSES OR  
 17      MOTOR VEHICLE REGISTRATION.—

18           (1) IN GENERAL.—Section 205(c)(2)(C)(vi) of  
 19      the Social Security Act (42 U.S.C. 405(c)(2)(C)(vi))  
 20      is amended—

21                   (A) by inserting “(I)” after “(vi)”; and

22                   (B) by adding at the end the following new  
 23      subclause:

24      “(II)(aa) An agency of a State (or political subdivi-  
 25      sion thereof), in the administration of any driver’s license

1 or motor vehicle registration law within its jurisdiction,  
 2 may not disclose the social security account numbers  
 3 issued by the Commissioner of Social Security, or any de-  
 4 rivative of such numbers, on any driver's license or motor  
 5 vehicle registration or any other document issued by such  
 6 State (or political subdivision thereof) to an individual for  
 7 purposes of identification of such individual.

8 “(bb) Nothing in this subclause shall be construed  
 9 as precluding an agency of a State (or political subdivision  
 10 thereof), in the administration of any driver's license or  
 11 motor vehicle registration law within its jurisdiction, from  
 12 using a social security account number for an internal use  
 13 or to link with the database of an agency of another State  
 14 that is responsible for the administration of any driver's  
 15 license or motor vehicle registration law.”.

16 (2) EFFECTIVE DATE.—The amendment made  
 17 by this subsection shall apply with respect to li-  
 18 censes, registrations, and other documents issued or  
 19 reissued after the date that is 1 year after the date  
 20 of enactment of this Act.

21 (c) PROHIBITION OF INMATE ACCESS TO SOCIAL SE-  
 22 CURITY ACCOUNT NUMBERS.—

23 (1) IN GENERAL.—Section 205(c)(2)(C) of the  
 24 Social Security Act (42 U.S.C. 405(c)(2)(C)) (as

1       amended by subsection (b)) is amended by adding  
 2       at the end the following new clause:

3       “(xi) No Federal, State, or local agency may employ,  
 4       or enter into a contract for the use or employment of, pris-  
 5       oners in any capacity that would allow such prisoners ac-  
 6       cess to the social security account numbers of other indi-  
 7       viduals. For purposes of this clause, the term ‘prisoner’  
 8       means an individual confined in a jail, prison, or other  
 9       penal institution or correctional facility pursuant to such  
 10      individual’s conviction of a criminal offense.”.

11               (2) EFFECTIVE DATE.—The amendment made  
 12      by this subsection shall apply with respect to em-  
 13      ployment of prisoners, or entry into contract with  
 14      prisoners, after the date that is 1 year after the date  
 15      of enactment of this Act.

16   **SEC. 206. LIMITS ON PERSONAL DISCLOSURE OF A SOCIAL**  
 17                   **SECURITY NUMBER FOR CONSUMER TRANS-**  
 18                   **ACTIONS.**

19       (a) IN GENERAL.—Part A of title XI of the Social  
 20      Security Act (42 U.S.C. 1301 et seq.) is amended by add-  
 21      ing at the end the following new section:

1 **“SEC. 1150A. LIMITS ON PERSONAL DISCLOSURE OF A SO-**  
 2 **CIAL SECURITY NUMBER FOR CONSUMER**  
 3 **TRANSACTIONS.**

4 “(a) IN GENERAL.—A commercial entity may not re-  
 5 quire an individual to provide the individual’s social secu-  
 6 rity number when purchasing a commercial good or service  
 7 or deny an individual the good or service for refusing to  
 8 provide that number except—

9 “(1) for any purpose relating to—

10 “(A) obtaining a consumer report for any  
 11 purpose permitted under the Fair Credit Re-  
 12 porting Act;

13 “(B) a background check of the individual  
 14 conducted by a landlord, lessor, employer, vol-  
 15 untary service agency, or other entity as deter-  
 16 mined by the Attorney General;

17 “(C) law enforcement; or

18 “(D) a Federal or State law requirement;

19 or

20 “(2) if the social security number is necessary  
 21 to verify identity and to prevent fraud with respect  
 22 to the specific transaction requested by the con-  
 23 sumer and no other form of identification can  
 24 produce comparable information.



1 “(b) OTHER FORMS OF IDENTIFICATION.—Nothing  
 2 in this section shall be construed to prohibit a commercial  
 3 entity from—

4 “(1) requiring an individual to provide 2 forms  
 5 of identification that do not contain the social secu-  
 6 rity number of the individual; or

7 “(2) denying an individual a good or service for  
 8 refusing to provide 2 forms of identification that do  
 9 not contain such number.

10 “(c) APPLICATION OF CIVIL MONEY PENALTIES.—  
 11 A violation of this section shall be deemed to be a violation  
 12 of section 1129(a)(3)(F).

13 “(d) APPLICATION OF CRIMINAL PENALTIES.—A vio-  
 14 lation of this section shall be deemed to be a violation of  
 15 section 208(a)(8).”.

16 (b) EFFECTIVE DATE.—The amendment made by  
 17 subsection (a) shall apply to requests to provide a social  
 18 security number made on or after the date of enactment  
 19 of this Act.

20 **SEC. 207. EXTENSION OF CIVIL MONETARY PENALTIES FOR**  
 21 **MISUSE OF A SOCIAL SECURITY NUMBER.**

22 (a) TREATMENT OF WITHHOLDING OF MATERIAL  
 23 FACTS.—

1           (1) CIVIL PENALTIES.—The first sentence of  
2           section 1129(a)(1) of the Social Security Act (42  
3           U.S.C. 1320a–8(a)(1)) is amended—

4                   (A) by striking “who” and inserting  
5           “who—”;

6                   (B) by striking “makes” and all that fol-  
7           lows through “shall be subject to” and inserting  
8           the following:

9           “(A) makes, or causes to be made, a statement  
10          or representation of a material fact, for use in deter-  
11          mining any initial or continuing right to or the  
12          amount of monthly insurance benefits under title II  
13          or benefits or payments under title VIII or XVI,  
14          that the person knows or should know is false or  
15          misleading;

16                  “(B) makes such a statement or representation  
17          for such use with knowing disregard for the truth;  
18          or

19                  “(C) omits from a statement or representation  
20          for such use, or otherwise withholds disclosure of, a  
21          fact which the individual knows or should know is  
22          material to the determination of any initial or con-  
23          tinuing right to or the amount of monthly insurance  
24          benefits under title II or benefits or payments under  
25          title VIII or XVI and the individual knows, or

1       should know, that the statement or representation  
 2       with such omission is false or misleading or that the  
 3       withholding of such disclosure is misleading,  
 4 shall be subject to”;

5               (C) by inserting “or each receipt of such  
 6       benefits while withholding disclosure of such  
 7       fact” after “each such statement or representa-  
 8       tion”;

9               (D) by inserting “or because of such with-  
 10       holding of disclosure of a material fact” after  
 11       “because of such statement or representation”;  
 12       and

13              (E) by inserting “or such a withholding of  
 14       disclosure” after “such a statement or rep-  
 15       resentation”.

16              (2) ADMINISTRATIVE PROCEDURE FOR IMPOS-  
 17       ING PENALTIES.—The first sentence of section  
 18       1129A(a) of the Social Security Act (42 U.S.C.  
 19       1320a–8a(a)) is amended—

20              (A) by striking “who” and inserting  
 21       “who—”; and

22              (B) by striking “makes” and all that fol-  
 23       lows through “shall be subject to” and inserting  
 24       the following new paragraphs:

1           “(1) makes, or causes to be made, a statement  
 2           or representation of a material fact, for use in deter-  
 3           mining any initial or continuing right to or the  
 4           amount of monthly insurance benefits under title II  
 5           or benefits or payments under title VIII or XVI,  
 6           that the person knows or should know is false or  
 7           misleading;

8           “(2) makes such a statement or representation  
 9           for such use with knowing disregard for the truth;  
 10          or

11          “(3) omits from a statement or representation  
 12          for such use, or otherwise withholds disclosure of, a  
 13          fact which the individual knows or should know is  
 14          material to the determination of any initial or con-  
 15          tinuing right to or the amount of monthly insurance  
 16          benefits under title II or benefits or payments under  
 17          title VIII or XVI and the individual knows, or  
 18          should know, that the statement or representation  
 19          with such omission is false or misleading or that the  
 20          withholding of such disclosure is misleading,  
 21          shall be subject to”.

22          (b) APPLICATION OF CIVIL MONEY PENALTIES TO  
 23          ELEMENTS OF CRIMINAL VIOLATIONS.—Section 1129(a)  
 24          of the Social Security Act (42 U.S.C. 1320a–8(a)), as  
 25          amended by subsection (a)(1), is amended—

1           (1) by redesignating paragraph (2) as para-  
2       graph (4);

3           (2) by redesignating the last sentence of para-  
4       graph (1) as paragraph (2) and inserting such para-  
5       graph after paragraph (1); and

6           (3) by inserting after paragraph (2) (as so re-  
7       designated) the following new paragraph:

8       “(3) Any person (including an organization, agency,  
9       or other entity) who—

10           “(A) uses a social security account number that  
11       such person knows or should know has been as-  
12       signed by the Commissioner of Social Security (in an  
13       exercise of authority under section 205(c)(2) to es-  
14       tablish and maintain records) on the basis of false  
15       information furnished to the Commissioner by any  
16       person;

17           “(B) falsely represents a number to be the so-  
18       cial security account number assigned by the Com-  
19       missioner of Social Security to any individual, when  
20       such person knows or should know that such number  
21       is not the social security account number assigned  
22       by the Commissioner to such individual;

23           “(C) knowingly alters a social security card  
24       issued by the Commissioner of Social Security, or  
25       possesses such a card with intent to alter it;

1           “(D) knowingly displays, sells, or purchases a  
2           card that is, or purports to be, a card issued by the  
3           Commissioner of Social Security, or possesses such  
4           a card with intent to display, purchase, or sell it;

5           “(E) counterfeits a social security card, or pos-  
6           sesses a counterfeit social security card with intent  
7           to display, sell, or purchase it;

8           “(F) discloses, uses, compels the disclosure of,  
9           or knowingly displays, sells, or purchases the social  
10          security account number of any person in violation  
11          of the laws of the United States;

12          “(G) with intent to deceive the Commissioner of  
13          Social Security as to such person’s true identity (or  
14          the true identity of any other person) furnishes or  
15          causes to be furnished false information to the Com-  
16          missioner with respect to any information required  
17          by the Commissioner in connection with the estab-  
18          lishment and maintenance of the records provided  
19          for in section 205(c)(2);

20          “(H) offers, for a fee, to acquire for any indi-  
21          vidual, or to assist in acquiring for any individual,  
22          an additional social security account number or a  
23          number which purports to be a social security ac-  
24          count number; or

1           “(I) being an officer or employee of a Federal,  
 2           State, or local agency in possession of any individ-  
 3           ual’s social security account number, willfully acts or  
 4           fails to act so as to cause a violation by such agency  
 5           of clause (vi)(II) or (x) of section 205(c)(2)(C),  
 6           shall be subject to, in addition to any other penalties that  
 7           may be prescribed by law, a civil money penalty of not  
 8           more than \$5,000 for each violation. Such person shall  
 9           also be subject to an assessment, in lieu of damages sus-  
 10          tained by the United States resulting from such violation,  
 11          of not more than twice the amount of any benefits or pay-  
 12          ments paid as a result of such violation.”.

13          (c) CLARIFICATION OF TREATMENT OF RECOVERED  
 14          AMOUNTS.—Section 1129(e)(2)(B) of the Social Security  
 15          Act (42 U.S.C. 1320a–8(e)(2)(B)) is amended by striking  
 16          “In the case of amounts recovered arising out of a deter-  
 17          mination relating to title VIII or XVI,” and inserting “In  
 18          the case of any other amounts recovered under this sec-  
 19          tion,”.

20          (d) CONFORMING AMENDMENTS.—

21               (1) Section 1129(b)(3)(A) of the Social Secu-  
 22               rity Act (42 U.S.C. 1320a–8(b)(3)(A)) is amended  
 23               by striking “charging fraud or false statements”.

24               (2) Section 1129(c)(1) of the Social Security  
 25               Act (42 U.S.C. 1320a–8(c)(1)) is amended by strik-

1 ing “and representations” and inserting “, represen-  
2 tations, or actions”.

3 (3) Section 1129(e)(1)(A) of the Social Security  
4 Act (42 U.S.C. 1320a–8(e)(1)(A)) is amended by  
5 striking “statement or representation referred to in  
6 subsection (a) was made” and inserting “violation  
7 occurred”.

8 (e) EFFECTIVE DATES.—

9 (1) IN GENERAL.—Except as provided in para-  
10 graph (2), the amendments made by this section  
11 shall apply with respect to violations of sections  
12 1129 and 1129A of the Social Security Act (42  
13 U.S.C. 1320–8 and 1320a–8a), as amended by this  
14 section, committed after the date of enactment of  
15 this Act.

16 (2) VIOLATIONS BY GOVERNMENT AGENTS IN  
17 POSSESSION OF SOCIAL SECURITY NUMBERS.—Sec-  
18 tion 1129(a)(3)(I) of the Social Security Act (42  
19 U.S.C. 1320a–8(a)(3)(I)), as added by subsection  
20 (b), shall apply with respect to violations of that sec-  
21 tion occurring on or after the effective date under  
22 section 202(c).



1 **TITLE III—LIMITATIONS ON**  
 2 **SALE AND SHARING OF NON-**  
 3 **PUBLIC PERSONAL FINAN-**  
 4 **CIAL INFORMATION**

5 **SEC. 301. DEFINITION OF SALE.**

6 Section 509 of the Gramm-Leach-Bliley Act (15  
 7 U.S.C. 6809) is amended by adding at the end the fol-  
 8 lowing:

9 “(12) SALE.—The terms ‘sale’, ‘sell’, and ‘sold’,  
 10 with respect to nonpublic personal information,  
 11 mean the exchange of such information for any  
 12 thing of value, directly or indirectly, including the li-  
 13 censing, bartering, or renting of such information.”.

14 **SEC. 302. RULES APPLICABLE TO SALE OF NONPUBLIC**  
 15 **PERSONAL INFORMATION.**

16 Section 502 of the Gramm-Leach-Bliley Act (15  
 17 U.S.C. 6802) is amended—

18 (1) in the section heading, by inserting “**AND**  
 19 **SALES**” after “**DISCLOSURES**”;

20 (2) in subsection (a), by inserting “or sell”  
 21 after “disclose”;

22 (3) in subsection (b)—

23 (A) in the heading, by inserting “**FOR CER-**  
 24 **TAIN DISCLOSURES**” before the period; and

25 (B) by adding at the end the following:

1           “(3) LIMITATION.—Paragraphs (1) and (2) do  
2           not apply to the sale of nonpublic personal informa-  
3           tion.”;

4           (4) by striking subsection (e);

5           (5) by redesignating subsections (c) and (d) as  
6           subsections (d) and (e), respectively; and

7           (6) by inserting after subsection (b) the fol-  
8           lowing:

9           “(c) OPT-IN FOR SALE OF INFORMATION.—

10           “(1) AFFIRMATIVE CONSENT REQUIRED.—Each  
11           agency or authority described in section 504(a)  
12           shall, by rule prescribed under that section, prohibit  
13           a financial institution that is subject to its jurisdic-  
14           tion from selling any nonpublic personal information  
15           to any nonaffiliated third party, unless the consumer  
16           to whom the information pertains—

17                   “(A) has affirmatively consented in accord-  
18                   ance with such rule to the sale of such informa-  
19                   tion; and

20                   “(B) has not withdrawn the consent.

21           “(2) DENIAL OF SERVICE PROHIBITED.—The  
22           rule prescribed pursuant to paragraph (1) shall pro-  
23           hibit a financial institution from denying any con-  
24           sumer a financial product or a financial service for

1 the refusal by the consumer to grant the consent re-  
 2 quired by such rule.”.

3 **SEC. 303. EXCEPTIONS TO SALE PROHIBITION.**

4 Section 502 of the Gramm-Leach-Bliley Act (15  
 5 U.S.C. 6802), as amended by this title, is amended by  
 6 adding at the end the following:

7 “(f) GENERAL EXCEPTIONS.—This section does not  
 8 prohibit—

9 “(1) the sale or other disclosure of nonpublic  
 10 personal information to a nonaffiliated third party—

11 “(A) as necessary to effect, administer, or  
 12 enforce a transaction requested or authorized  
 13 by the consumer to whom the information per-  
 14 tains, or in connection with—

15 “(i) servicing or processing a financial  
 16 product or service requested or authorized  
 17 by the consumer;

18 “(ii) maintaining or servicing the ac-  
 19 count of the consumer with the financial  
 20 institution, or with another entity as part  
 21 of a private label credit card program or  
 22 other extension of credit on behalf of such  
 23 entity; or

24 “(iii) a proposed or actual  
 25 securitization, secondary market sale (in-

1 including sales of servicing rights), or similar  
2 transaction related to a transaction of the  
3 consumer;

4 “(B) with the consent or at the direction  
5 of the consumer, in accordance with applicable  
6 rules prescribed under this subtitle;

7 “(C) to the extent specifically permitted or  
8 required under other provisions of law and in  
9 accordance with the Right to Financial Privacy  
10 Act of 1978; or

11 “(D) to law enforcement agencies (includ-  
12 ing a Federal functional regulator, the Sec-  
13 retary of the Treasury, with respect to sub-  
14 chapter II of chapter 53 of title 31, United  
15 States Code, and chapter 2 of title I of Public  
16 Law 91–508 (12 U.S.C. 1951–1959), a State  
17 insurance authority, or the Federal Trade Com-  
18 mission), self-regulatory organizations, or for  
19 an investigation on a matter related to public  
20 safety; or

21 “(2) the disclosure, other than the sale, of non-  
22 public personal information—

23 “(A) to protect the confidentiality or secu-  
24 rity of the records of the financial institution

1       pertaining to the consumer, the service or prod-  
2       uct, or the transaction therein;

3               “(B) to protect against or prevent actual  
4       or potential fraud, unauthorized transactions,  
5       claims, or other liability;

6               “(C) for required institutional risk control,  
7       or for resolving customer disputes or inquiries;

8               “(D) to persons holding a legal or bene-  
9       ficial interest relating to the consumer;

10              “(E) to persons acting in a fiduciary or  
11       representative capacity on behalf of the con-  
12       sumer;

13              “(F) to provide information to insurance  
14       rate advisory organizations, guaranty funds or  
15       agencies, applicable rating agencies of the fi-  
16       nancial institution, persons assessing the com-  
17       pliance of the institution with industry stand-  
18       ards, or the attorneys, accountants, or auditors  
19       of the institution;

20              “(G) to a consumer reporting agency, in  
21       accordance with the Fair Credit Reporting Act  
22       or from a consumer report reported by a con-  
23       sumer reporting agency, as those terms are de-  
24       fined in that Act;

1           “(H) in connection with a proposed or ac-  
2           tual sale, merger, transfer, or exchange of all or  
3           a portion of a business or operating unit if the  
4           disclosure of nonpublic personal information  
5           concerns solely consumers of such business or  
6           unit;

7           “(I) to comply with Federal, State, or local  
8           laws, rules, or other applicable legal require-  
9           ments, or with a properly authorized civil,  
10          criminal, or regulatory investigation or sub-  
11          poena or summons by Federal, State, or local  
12          authorities; or

13          “(J) to respond to judicial process or gov-  
14          ernment regulatory authorities having jurisdic-  
15          tion over the financial institution for examina-  
16          tion, compliance, or other purposes, as author-  
17          ized by law.”.

18 **SEC. 304. EFFECTIVE DATE.**

19          This title shall take effect 6 months after the date  
20          on which the rules are required to be prescribed under  
21          section 504(a)(3).

1 **TITLE IV—LIMITATIONS ON THE**  
2 **PROVISION OF PROTECTED**  
3 **HEALTH INFORMATION**

4 **SEC. 401. DEFINITIONS.**

5 In this title:

6 (1) BUSINESS ASSOCIATE.—

7 (A) IN GENERAL.—Except as provided in  
8 subparagraph (B), the term “business asso-  
9 ciate” means, with respect to a covered entity,  
10 a person who—

11 (i) on behalf of such covered entity or  
12 of an organized health care arrangement in  
13 which the covered entity participates, but  
14 other than in the capacity of a member of  
15 the workforce of such covered entity or ar-  
16 rangement, performs, or assists in the per-  
17 formance of—

18 (I) a function or activity involv-  
19 ing the use or disclosure of individ-  
20 ually identifiable health information,  
21 including claims processing or admin-  
22 istration, data analysis, processing or  
23 administration, utilization review,  
24 quality assurance, billing, benefit

management, practice management,  
and repricing; or

(II) any other function or activity  
regulated under parts 160 through  
164 of title 45, Code of Federal Regu-  
lations; or

(ii) provides, other than in the capac-  
ity of a member of the workforce of such  
covered entity, legal, actuarial, accounting,  
consulting, data aggregation, management,  
administrative, accreditation, or financial  
services to or for such covered entity, or to  
or for an organized health care arrange-  
ment in which the covered entity partici-  
pates, where the provision of the service in-  
volves the disclosure of individually identi-  
fiable health information from such cov-  
ered entity or arrangement, or from an-  
other business associate of such covered  
entity or arrangement, to the person.

(B) LIMITATIONS.—

(i) IN GENERAL.—A covered entity  
participating in an organized health care  
arrangement that performs a function or  
activity as described by subparagraph



1 (A)(i) for or on behalf of such organized  
 2 health care arrangement, or that provides  
 3 a service as described in subparagraph  
 4 (A)(ii) to or for such organized health care  
 5 arrangement, does not, simply through the  
 6 performance of such function or activity or  
 7 the provision of such service, become a  
 8 business associate of other covered entities  
 9 participating in such organized health care  
 10 arrangement.

11 (ii) LIMITATION.—A covered entity  
 12 may be a business associate of another cov-  
 13 ered entity.

14 (2) COVERED ENTITY.—The term “covered en-  
 15 tity” means—

16 (A) a health plan;

17 (B) a health care clearinghouse; and

18 (C) a health care provider who transmits  
 19 any health information in electronic form in  
 20 connection with a transaction covered by parts  
 21 160 through 164 of title 45, Code of Federal  
 22 Regulations.

23 (3) DISCLOSURE.—The term “disclosure”  
 24 means the release, transfer, provision of access to, or

1       divulging in any other manner of information out-  
2       side the entity holding the information.

3               (4) EMPLOYER.—The term “employer” means  
4       a person or organization for whom an individual per-  
5       forms or has performed any service, of whatever na-  
6       ture, as the employee of that person or organization,  
7       except that—

8               (A) if the person for whom the individual  
9       performs or has performed the service does not  
10      have control of the payment of wages for such  
11      service, the term “employer” means the person  
12      having control of the payment of those wages;  
13      and

14              (B) in the case of a person paying wages  
15      on behalf of a nonresident alien individual, for-  
16      eign partnership, or foreign corporation, not en-  
17      gaged in trade or business within the United  
18      States, the term “employer” means that person.

19              (5) GROUP HEALTH PLAN.—The term “group  
20      health plan” means an employee welfare benefit plan  
21      (as defined in section 3(1) of the Employee Retire-  
22      ment Income and Security Act of 1974 (29 U.S.C.  
23      1002(1)), including insured and self-insured plans,  
24      to the extent that the plan provides medical care (as  
25      defined in section 2791(a)(2) of the Public Health

1 Service Act, 42 U.S.C. 300gg-91(a)(2)), including  
 2 items and services paid for as medical care, to em-  
 3 ployees or their dependents directly or through in-  
 4 surance, reimbursement, or otherwise, that—

5 (A) has 50 or more participants (as de-  
 6 fined in section 3(7) of Employee Retirement  
 7 Income and Security Act of 1974, 29 U.S.C.  
 8 1002(7)); or

9 (B) is administered by an entity other than  
 10 the employer that established and maintains the  
 11 plan.

12 (6) HEALTH CARE.—The term “health care”  
 13 means care, services, or supplies related to the  
 14 health of an individual, including—

15 (A) preventive, diagnostic, therapeutic, re-  
 16 habilitative, maintenance, or palliative care and  
 17 counseling services, assessment, or procedure  
 18 with respect to the physical or mental condition,  
 19 or functional status, of an individual or that af-  
 20 fects the structure or function of the body; and

21 (B) a sale or dispensing of a drug, device,  
 22 equipment, or other item in accordance with a  
 23 prescription.

24 (7) HEALTH CARE CLEARINGHOUSE.—The term  
 25 “health care clearinghouse” means a public or pri-

1 vate entity, including a billing service, repricing com-  
 2 pany, community health management information  
 3 system or community health information system,  
 4 and value-added networks and switches, that—

5 (A) processes or facilitates the processing  
 6 of health information received from another en-  
 7 tity in a nonstandard format or containing non-  
 8 standard data content into standard data ele-  
 9 ments or a standard transaction; or

10 (B) receives a standard transaction from  
 11 another entity and processes or facilitates the  
 12 processing of health information into non-  
 13 standard format or nonstandard data content  
 14 for the receiving entity.

15 (8) HEALTH CARE PROVIDER.—The term  
 16 “health care provider” has the same meaning given  
 17 the terms “provider of services” and “provider of  
 18 medical or health services” in subsections (u) and  
 19 (s) of section 1861 of the Social Security Act (42  
 20 U.S.C. 1395x), and includes any other person or or-  
 21 ganization who furnishes, bills, or is paid for health  
 22 care in the normal course of business.

23 (9) HEALTH INFORMATION.—The term “health  
 24 information” means any information, whether oral  
 25 or recorded in any form or medium, that—

1 (A) is created or received by a health care  
 2 provider, health plan, public health authority,  
 3 employer, life insurer, school or university, or  
 4 health care clearinghouse; and

5 (B) relates to the past, present, or future  
 6 physical or mental health or condition of an in-  
 7 dividual; the provision of health care to an indi-  
 8 vidual; or the past, present, or future payment  
 9 for the provision of health care to an individual.

10 (10) HEALTH INSURANCE ISSUER.—The term  
 11 “health insurance issuer” means a health insurance  
 12 issuer (as defined in section 2791(b)(2) of the Pub-  
 13 lic Health Service Act, 42 U.S.C. 300gg–91(b)(2))  
 14 and used in the definition of health plan in this sec-  
 15 tion and includes an insurance company, insurance  
 16 service, or insurance organization (including an  
 17 HMO) that is licensed to engage in the business of  
 18 insurance in a State and is subject to State law that  
 19 regulates insurance. Such term does not include a  
 20 group health plan.

21 (11) HEALTH MAINTENANCE ORGANIZATION.—  
 22 The term “health maintenance organization”  
 23 (HMO) (as defined in section 2791(b)(3) of the  
 24 Public Health Service Act, 42 U.S.C. 300gg–91  
 25 (b)(3)) and used in the definition of health plan in

1       this section, means a federally qualified HMO, an  
 2       organization recognized as an HMO under State  
 3       law, or a similar organization regulated for solvency  
 4       under State law in the same manner and to the  
 5       same extent as such an HMO.

6           (12) HEALTH OVERSIGHT AGENCY.—The term  
 7       “health oversight agency” means an agency or au-  
 8       thority of the United States, a State, a territory, a  
 9       political subdivision of a State or territory, or an In-  
 10      dian tribe, or a person or entity acting under a  
 11      grant of authority from or contract with such public  
 12      agency, including the employees or agents of such  
 13      public agency or its contractors or persons or enti-  
 14      ties to whom it has granted authority, that is au-  
 15      thorized by law to oversee the health care system  
 16      (whether public or private) or government programs  
 17      in which health information is necessary to deter-  
 18      mine eligibility or compliance, or to enforce civil  
 19      rights laws for which health information is relevant.

20          (13) HEALTH PLAN.—The term “health plan”  
 21      means an individual or group plan that provides, or  
 22      pays the cost of, medical care, as defined in section  
 23      2791(a)(2) of the Public Health Service Act (42  
 24      U.S.C. 300gg–91(a)(2))—

25           (A) including, singly or in combination—

- 1 (i) a group health plan;
- 2 (ii) a health insurance issuer;
- 3 (iii) an HMO;
- 4 (iv) part A or B of the medicare pro-
- 5 gram under title XVIII of the Social Secu-
- 6 rity Act (42 U.S.C. 1395 et seq.);
- 7 (v) the medicaid program under title
- 8 XIX of the Social Security Act (42 U.S.C.
- 9 1396 et seq.);
- 10 (vi) an issuer of a medicare supple-
- 11 mental policy (as defined in section
- 12 1882(g)(1) of the Social Security Act, 42
- 13 U.S.C. 1395ss(g)(1));
- 14 (vii) an issuer of a long-term care pol-
- 15 icy, excluding a nursing home fixed-indem-
- 16 nity policy;
- 17 (viii) an employee welfare benefit plan
- 18 or any other arrangement that is estab-
- 19 lished or maintained for the purpose of of-
- 20 fering or providing health benefits to the
- 21 employees of 2 or more employers;
- 22 (ix) the health care program for active
- 23 military personnel under title 10, United
- 24 States Code;

1 (x) the veterans health care program  
2 under chapter 17 of title 38, United States  
3 Code;

4 (xi) the Civilian Health and Medical  
5 Program of the Uniformed Services  
6 (CHAMPUS) (as defined in section  
7 1072(4) of title 10, United States Code);

8 (xii) the Indian Health Service pro-  
9 gram under the Indian Health Care Im-  
10 provement Act (25 U.S.C. 1601 et seq.);

11 (xiii) the Federal Employees Health  
12 Benefits Program under chapter 89 of title  
13 5, United States Code;

14 (xiv) an approved State child health  
15 plan under title XXI of the Social Security  
16 Act (42 U.S.C. 1397aa et seq.), providing  
17 benefits for child health assistance that  
18 meet the requirements of section 2103 of  
19 such Act (42 U.S.C. 1397cc);

20 (xv) the Medicare+Choice program  
21 under part C of title XVIII of the Social  
22 Security Act (42 U.S.C. 1395w-21 et  
23 seq.);

24 (xvi) a high risk pool that is a mecha-  
25 nism established under State law to pro-



vide health insurance coverage or comparable coverage to eligible individuals; and

(xvii) any other individual or group plan, or combination of individual or group plans, that provides or pays for the cost of medical care (as defined in section 2791(a)(2) of the Public Health Service Act (42 U.S.C. 300gg–91(a)(2))); and

(B) excluding—

(i) any policy, plan, or program to the extent that it provides, or pays for the cost of, excepted benefits that are listed in section 2791(c)(1) of the Public Health Service Act (42 U.S.C. 300gg–91(c)(1)); and

(ii) a government-funded program (other than 1 listed in clause (i) through (xvi) of paragraph (1)), whose principal purpose is other than providing, or paying the cost of, health care, or whose principal activity is the direct provision of health care to persons, or the making of grants to fund the direct provision of health care to persons.

(14) INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION.—The term “individually identifiable

health information” means information that is a subset of health information, including demographic information collected from an individual, that—

(A) is created or received by a covered entity or employer; and

(B)(i) relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual; and

(ii)(I) identifies an individual; or

(II) with respect to which there is a reasonable basis to believe that the information can be used to identify an individual.

(15) LAW ENFORCEMENT OFFICIAL.—The term “law enforcement official” means an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to—

(A) investigate or conduct an official inquiry into a potential violation of law; or

1 (B) prosecute or otherwise conduct a  
2 criminal, civil, or administrative proceeding  
3 arising from an alleged violation of law.

4 (16) LIFE INSURER.—The term “life insurer”  
5 means a life insurance company (as defined in sec-  
6 tion 816 of the Internal Revenue Code of 1986), in-  
7 cluding the employees and agents of such company.

8 (17) MARKETING.—

9 (A) IN GENERAL.—The term “marketing”  
10 means to make a communication about a prod-  
11 uct or service a purpose of which is to encour-  
12 age recipients of the communication to pur-  
13 chase or use the product or service.

14 (B) LIMITATION.—Such term does not in-  
15 clude communications that meet the require-  
16 ments of subparagraph (C) and that are made  
17 by a covered entity—

18 (i) for the purpose of describing the  
19 entities participating in a health care pro-  
20 vider network or health plan network, or  
21 for the purpose of describing if and the ex-  
22 tent to which a product or service (or pay-  
23 ment for such product or service) is pro-  
24 vided by a covered entity or included in a  
25 plan of benefits; or

1 (ii) that are tailored to the cir-  
2 cumstances of a particular individual and  
3 the communications are—

4 (I) made by a health care pro-  
5 vider to an individual as part of the  
6 treatment of the individual, and for  
7 the purpose of furthering the treat-  
8 ment of that individual; or

9 (II) made by a health care pro-  
10 vider to an individual in the course of  
11 managing the treatment of that indi-  
12 vidual, or for the purpose of directing  
13 or recommending to that individual al-  
14 ternative treatments, therapies, health  
15 care providers, or settings of care.

16 (C) NOT INCLUDED.—A communication  
17 described in subparagraph (B) is not included  
18 in marketing if—

19 (i) the communication is made orally;

20 or

21 (ii) the communication is in writing  
22 and the covered entity does not receive di-  
23 rect or indirect remuneration from a third  
24 party for making the communication.

25 (18) NONCOVERED ENTITY.—

1 (A) IN GENERAL.—The term “noncovered  
 2 entity” means any person or public or private  
 3 entity, including but not limited to a health re-  
 4 searcher, school or university, life insurer, em-  
 5 ployer, public health authority, health oversight  
 6 agency, or law enforcement official, or any per-  
 7 son acting as an agent of such entities or per-  
 8 sons, that is not a covered entity.

9 (B) LIMITATION.—The term “noncovered  
 10 entity” includes a covered entity if such covered  
 11 entity is acting as a business associate.

12 (19) ORGANIZED HEALTH CARE ARRANGE-  
 13 MENT.—The term “organized health care arrange-  
 14 ment” means—

15 (A) a clinically integrated care setting in  
 16 which individuals typically receive health care  
 17 from more than 1 health care provider;

18 (B) an organized system of health care in  
 19 which more than 1 covered entity participates,  
 20 and in which the participating covered  
 21 entities—

22 (i) hold themselves out to the public  
 23 as participating in a joint arrangement;  
 24 and

1 (ii) participate in joint activities in-  
2 cluding at least—

3 (I) utilization review, in which  
4 health care decisions by participating  
5 covered entities are reviewed by other  
6 participating covered entities or by a  
7 third party on their behalf;

8 (II) quality assessment and im-  
9 provement activities, in which treat-  
10 ment provided by participating cov-  
11 ered entities is assessed by other par-  
12 ticipating covered entities or by a  
13 third party on their behalf; or

14 (III) payment activities, if the fi-  
15 nancial risk for delivering health care  
16 is shared, in part or in whole, by par-  
17 ticipating covered entities through the  
18 joint arrangement and if protected  
19 health information created or received  
20 by a covered entity is reviewed by  
21 other participating covered entities or  
22 by a third party on their behalf for  
23 the purpose of administering the shar-  
24 ing of financial risk;

1 (C) a group health plan and a health in-  
2 surance issuer or HMO with respect to such  
3 group health plan, but only with respect to pro-  
4 tected health information created or received by  
5 such health insurance issuer or HMO that re-  
6 lates to individuals who are or who have been  
7 participants or beneficiaries in such group  
8 health plan;

9 (D) a group health plan and 1 or more  
10 other group health plans each of which are  
11 maintained by the same plan sponsor; or

12 (E) the group health plans described in  
13 subparagraph (D) and health insurance issuers  
14 or HMOs with respect to such group health  
15 plans, but only with respect to protected health  
16 information created or received by such health  
17 insurance issuers or HMOs that relates to indi-  
18 viduals who are or have been participants or  
19 beneficiaries in any of such group health plans.

20 (20) PROTECTED HEALTH INFORMATION.—The  
21 term “protected health information” means individ-  
22 ually identifiable health information that is in any  
23 form or medium. The term does not include individ-  
24 ually identifiable health information in education

1 records covered by section 444 of the General Edu-  
2 cation Provisions Act (20 U.S.C. 1232g).

3 (21) PUBLIC HEALTH AUTHORITY.—The term  
4 “public health authority” means an agency or au-  
5 thority of the United States, a State, a territory, a  
6 political subdivision of a State or territory, or an In-  
7 dian tribe, or a person or entity acting under a  
8 grant of authority from or contract with such public  
9 agency, including employees or agents of such public  
10 agency or its contractors or persons or entities to  
11 whom it has granted authority, that is responsible  
12 for public health matters as part of its official man-  
13 date.

14 (22) SCHOOL OR UNIVERSITY.—The term  
15 “school or university” means an institution or place  
16 for instruction or education, including an elementary  
17 school, secondary school, or institution of higher  
18 learning, a college, or an assemblage of colleges  
19 united under 1 corporate organization or govern-  
20 ment.

21 (23) SECRETARY.—The term “Secretary”  
22 means the Secretary of Health and Human Services.

23 (24) SALE; SELL; SOLD.—The terms “sale”,  
24 “sell”, and “sold”, with respect to protected health  
25 information, mean the exchange of such information



1 for anything of value, directly or indirectly, including  
 2 the licensing, bartering, or renting of such informa-  
 3 tion.

4 (25) USE.—The term “use” means, with re-  
 5 spect to individually identifiable health information,  
 6 the sharing, employment, application, utilization, ex-  
 7 amination, or analysis of such information within an  
 8 entity that maintains such information.

9 (26) WRITING.—The term “writing” means  
 10 writing in either a paper-based or computer-based  
 11 form, including electronic and digital signatures.

12 **SEC. 402. PROHIBITION AGAINST SELLING PROTECTED**  
 13 **HEALTH INFORMATION.**

14 (a) IN GENERAL.—A noncovered entity shall not sell  
 15 the protected health information of an individual without  
 16 an authorization that is valid under section 403. When  
 17 a noncovered entity obtains or receives authorization to  
 18 sell such information, such sale must be consistent with  
 19 such authorization.

20 (b) SCOPE.—A sale of protected health information  
 21 as described under subsection (a) shall be limited to the  
 22 minimum amount of information necessary to accomplish  
 23 the purpose for which the sale is made.

24 (c) PURPOSE.—A recipient of information sold pursu-  
 25 ant to this title may use or disclose such information solely

1 to carry out the purpose for which the information was  
2 sold.

3 (d) NOT REQUIRED.—Nothing in this title permitting  
4 the sale of protected health information shall be construed  
5 to require such sale.

6 (e) IDENTIFICATION OF INFORMATION AS PRO-  
7 TECTED HEALTH INFORMATION.—Information sold pur-  
8 suant to this title shall be clearly identified as protected  
9 health information.

10 (f) NO WAIVER.—Except as provided in this title, an  
11 individual's authorization to sell protected health informa-  
12 tion shall not be construed as a waiver of any rights that  
13 the individual has under other Federal or State laws, the  
14 rules of evidence, or common law.

15 **SEC. 403. AUTHORIZATION FOR SALE OF PROTECTED**  
16 **HEALTH INFORMATION.**

17 (a) VALID AUTHORIZATION.—A valid authorization is  
18 a document that complies with all requirements of this  
19 section. Such authorization may include additional infor-  
20 mation not required under this section, provided that such  
21 information is not inconsistent with the requirements of  
22 this section.

23 (b) DEFECTIVE AUTHORIZATION.—An authorization  
24 is not valid, if the document submitted has any of the fol-  
25 lowing defects:

1           (1) The expiration date has passed or the expi-  
2           ration event is known by the noncovered entity to  
3           have occurred.

4           (2) The authorization has not been filled out  
5           completely, with respect to an element described in  
6           subsections (e) and (f).

7           (3) The authorization is known by the non-  
8           covered entity to have been revoked.

9           (4) The authorization lacks an element required  
10          by subsections (e) and (f).

11          (5) Any material information in the authoriza-  
12          tion is known by the noncovered entity to be false.

13          (c) REVOCATION OF AUTHORIZATION.—An individual  
14          may revoke an authorization provided under this section  
15          at any time provided that the revocation is in writing, ex-  
16          cept to the extent that the noncovered entity has taken  
17          action in reliance thereon.

18          (d) DOCUMENTATION.—

19               (1) IN GENERAL.—A noncovered entity must  
20               document and retain any signed authorization under  
21               this section as required under paragraph (2).

22               (2) STANDARD.—A noncovered entity shall, if a  
23               communication is required by this title to be in writ-  
24               ing, maintain such writing, or an electronic copy, as  
25               documentation.

1           (3) RETENTION PERIOD.—A noncovered entity  
2       shall retain the documentation required by this sec-  
3       tion for 6 years from the date of its creation or the  
4       date when it last was in effect, whichever is later.

5       (e) CONTENT OF AUTHORIZATION.—

6           (1) CONTENT.—An authorization described in  
7       subsection (a) shall—

8           (A) contain a description of the informa-  
9       tion to be sold that identifies such information  
10      in a specific and meaningful manner;

11          (B) contain the name or other specific  
12      identification of the person, or class of persons,  
13      authorized to sell the information;

14          (C) contain the name or other specific  
15      identification of the person, or class of persons,  
16      to whom the information is to be sold;

17          (D) include an expiration date or an expi-  
18      ration event relating to the selling of such infor-  
19      mation that signifies that the authorization is  
20      valid until such date or event;

21          (E) include a statement that the individual  
22      has a right to revoke the authorization in writ-  
23      ing and the exceptions to the right to revoke,  
24      and a description of the procedure involved in  
25      such revocation;

1 (F) be in writing and include the signature  
2 of the individual and the date, or if the author-  
3 ization is signed by a personal representative of  
4 the individual, a description of such representa-  
5 tive's authority to act for the individual; and

6 (G) include a statement explaining the  
7 purpose for which such information is sold.

8 (2) PLAIN LANGUAGE.—The authorization shall  
9 be written in plain language.

10 (f) NOTICE.—

11 (1) IN GENERAL.—The authorization shall in-  
12 clude a statement that the individual may—

13 (A) inspect or copy the protected health in-  
14 formation to be sold; and

15 (B) refuse to sign the authorization.

16 (2) COPY TO THE INDIVIDUAL.—A noncovered  
17 entity shall provide the individual with a copy of the  
18 signed authorization.

19 (g) MODEL AUTHORIZATIONS.—The Secretary, after  
20 notice and opportunity for public comment, shall develop  
21 and disseminate model written authorizations of the type  
22 described in this section and model statements of the limi-  
23 tations on such authorizations. Any authorization obtained  
24 on a model authorization form developed by the Secretary

1 pursuant to the preceding sentence shall be deemed to sat-  
2 isfy the requirements of this section.

3 (h) NONCOERCION.—A covered entity or noncovered  
4 entity shall not condition the purchase of a product or the  
5 provision of a service to an individual based on whether  
6 such individual provides an authorization to such entity  
7 as described in this section.

8 **SEC. 404. PROHIBITION AGAINST RETALIATION.**

9 A noncovered entity that collects protected health in-  
10 formation, may not adversely affect another person, di-  
11 rectly or indirectly, because such person has exercised a  
12 right under this title, disclosed information relating to a  
13 possible violation of this title, or associated with, or as-  
14 sisted, a person in the exercise of a right under this title.

15 **SEC. 405. PROHIBITION AGAINST MARKETING PROTECTED**  
16 **HEALTH INFORMATION.**

17 (a) IN GENERAL.—Notwithstanding any other provi-  
18 sion of law, a covered entity or noncovered entity shall  
19 not use, disclose, or sell protected health information for  
20 marketing without an authorization that is valid under  
21 subsection (c), except as provided in subsection (b).

22 (b) EXCEPTION.—A health care provider may use or  
23 disclose protected health information for marketing with-  
24 out an authorization when it uses or discloses such infor-  
25 mation to make a marketing communication to an indi-

1   vidual if the communication occurs in a face-to-face en-  
2   counter between the health care provider and the indi-  
3   vidual.

4       (c) AUTHORIZATION.—

5           (1) IN GENERAL.—An authorization under sub-  
6   section (a) shall—

7           (A) contain a description of the informa-  
8           tion to be used, disclosed, or sold that identifies  
9           such information in a specific and meaningful  
10          manner;

11          (B) contain the name or other specific  
12          identification of the person, or class of persons,  
13          authorized to use, disclose, or sell the informa-  
14          tion;

15          (C) identify persons to whom the informa-  
16          tion is to be provided or sold;

17          (D) include an expiration date or an expi-  
18          ration event relating to the use, disclosure, or  
19          sale of such information that signifies that the  
20          authorization is valid until such date or event;

21          (E) include a statement that the individual  
22          has a right to revoke the authorization in writ-  
23          ing and that there are exceptions to the right  
24          to revoke, and a description of the procedure in-  
25          volved in such revocation;

1 (F) be in writing and include the signature  
2 of the individual and the date, or if the author-  
3 ization is signed by a personal representative of  
4 the individual, a description of such representa-  
5 tive's authority to act for the individual; and

6 (G) include a statement explaining the  
7 purpose for which such information is used, dis-  
8 closed, or sold.

9 (2) PLAIN LANGUAGE.—The authorization must  
10 be written in plain language.

11 (d) NOTICE.—The authorization shall include a state-  
12 ment that the individual may—

13 (1) inspect or copy the protected health infor-  
14 mation to be marketed as provided under section  
15 164.524 of title 45, Code of Federal Regulations (or  
16 a successor regulation); and

17 (2) refuse to sign the authorization.

18 (e) DOCUMENTATION.—A covered entity shall retain  
19 such documentation as required for any use, disclosure,  
20 or sale, as described under section 403(d).

21 (f) RESCISSION OF INDIVIDUALLY IDENTIFIABLE  
22 HEALTH INFORMATION REGULATION.—Effective as of  
23 December 28, 2000—

24 (1) section 164.514(e) of title 45, Code of Fed-  
25 eral Regulations (relating to standards for uses and



1 disclosures of protected health information for mar-  
2 keting), promulgated by the Secretary of Health and  
3 Human Services in the final rule entitled “Stand-  
4 ards for Privacy of Individually Identifiable Health  
5 Information” (65 Fed. Reg. 82462 (December 28,  
6 2000)) is void; and

7 (2) section 164.514 shall take effect as if sub-  
8 section (e) of such section had not been included in  
9 the promulgation of the final regulation.

10 (g) NONCOERCION.—A covered entity or noncovered  
11 entity shall not condition the purchase of a product or the  
12 provision of a service to an individual based on whether  
13 such individual provides an authorization to such entity  
14 as described in this section.

15 **SEC. 406. RULE OF CONSTRUCTION.**

16 Except for the provisions of section 405, all require-  
17 ments of this title shall not be construed to impose any  
18 additional requirements or in any way alter the require-  
19 ments imposed upon covered entities under parts 160  
20 through 164 of title 45, Code of Federal Regulations.

21 **SEC. 407. REGULATIONS.**

22 (a) IN GENERAL.—The Secretary shall promulgate  
23 regulations implementing the provisions of this title.

24 (b) TIMEFRAME.—Not later than 1 year after the  
25 date of enactment of this Act, the Secretary shall publish

1 proposed regulations in the Federal Register. With regard  
2 to such proposed regulations, the Secretary shall provide  
3 an opportunity for submission of comments by interested  
4 persons during a period of not less than 90 days. Not later  
5 than 2 years after the date of enactment of this Act, the  
6 Secretary shall publish final regulations in the Federal  
7 Register.

8 **SEC. 408. ENFORCEMENT.**

9 (a) IN GENERAL.—A covered entity or noncovered  
10 entity that knowingly violates section 402 or 405 shall be  
11 subject to a civil money penalty under this section.

12 (b) AMOUNT.—The civil money penalty described in  
13 subsection (a) shall not exceed \$100,000. In determining  
14 the amount of any penalty to be assessed, the Secretary  
15 shall take into account the previous record of compliance  
16 of the entity being assessed with the applicable provisions  
17 of this title and the gravity of the violation.

18 (c) ADMINISTRATIVE REVIEW.—

19 (1) OPPORTUNITY FOR HEARING.—The entity  
20 assessed shall be afforded an opportunity for a hear-  
21 ing by the Secretary upon request made within 30  
22 days after the date of the issuance of a notice of as-  
23 sessment. In such hearing the decision shall be made  
24 on the record pursuant to section 554 of title 5,  
25 United States Code. If no hearing is requested, the

1       assessment shall constitute a final and unappealable  
2       order.

3           (2) HEARING PROCEDURE.—If a hearing is re-  
4       quested, the initial agency decision shall be made by  
5       an administrative law judge, and such decision shall  
6       become the final order unless the Secretary modifies  
7       or vacates the decision. Notice of intent to modify or  
8       vacate the decision of the administrative law judge  
9       shall be issued to the parties within 30 days after  
10      the date of the decision of the judge. A final order  
11      which takes effect under this paragraph shall be  
12      subject to review only as provided under subsection  
13      (d).

14      (d) JUDICIAL REVIEW.—

15           (1) FILING OF ACTION FOR REVIEW.—Any enti-  
16      ty against whom an order imposing a civil money  
17      penalty has been entered after an agency hearing  
18      under this section may obtain review by the United  
19      States district court for any district in which such  
20      entity is located or the United States District Court  
21      for the District of Columbia by filing a notice of ap-  
22      peal in such court within 30 days from the date of  
23      such order, and simultaneously sending a copy of  
24      such notice by registered mail to the Secretary.

1           (2) CERTIFICATION OF ADMINISTRATIVE  
2 RECORD.—The Secretary shall promptly certify and  
3 file in such court the record upon which the penalty  
4 was imposed.

5           (3) STANDARD FOR REVIEW.—The findings of  
6 the Secretary shall be set aside only if found to be  
7 unsupported by substantial evidence as provided by  
8 section 706(2)(E) of title 5, United States Code.

9           (4) APPEAL.—Any final decision, order, or  
10 judgment of the district court concerning such re-  
11 view shall be subject to appeal as provided in chap-  
12 ter 83 of title 28 of such Code.

13       (e) FAILURE TO PAY ASSESSMENT; MAINTENANCE  
14 OF ACTION.—

15           (1) FAILURE TO PAY ASSESSMENT.—If any en-  
16 tity fails to pay an assessment after it has become  
17 a final and unappealable order, or after the court  
18 has entered final judgment in favor of the Secretary,  
19 the Secretary shall refer the matter to the Attorney  
20 General who shall recover the amount assessed by  
21 action in the appropriate United States district  
22 court.

23           (2) NONREVIEWABILITY.—In such action the  
24 validity and appropriateness of the final order im-  
25 posing the penalty shall not be subject to review.

1 (f) PAYMENT OF PENALTIES.—Except as otherwise  
 2 provided, penalties collected under this section shall be  
 3 paid to the Secretary (or other officer) imposing the pen-  
 4 alty and shall be available without appropriation and until  
 5 expended for the purpose of enforcing the provisions with  
 6 respect to which the penalty was imposed.

## 7 **TITLE V—DRIVER’S LICENSE** 8 **PRIVACY**

### 9 **SEC. 501. DRIVER’S LICENSE PRIVACY.**

10 Section 2725 of title 18, United States Code, is  
 11 amended by striking paragraphs (2) and (3) and adding  
 12 the following:

13 “(2) ‘person’ means an individual, organization,  
 14 or entity, but does not include a State or agency  
 15 thereof;

16 “(3) ‘personal information’ means information  
 17 that identifies an individual, including an individ-  
 18 ual’s photograph, social security number, driver  
 19 identification number, name, address (but not the 5-  
 20 digit zip code), telephone number, medical or dis-  
 21 ability information, any physical copy of a driver’s li-  
 22 cense, birth date, information on physical character-  
 23 istics, including height, weight, sex or eye color, or  
 24 any biometric identifiers on a license, including a

finger print, but not information on vehicular accidents, driving violations, and driver's status; and

“(4) ‘highly restricted personal information’ means an individual’s photograph or image, social security number, medical or disability information, any physical copy of a driver’s license, driver identification number, birth date, information on physical characteristics, including height, weight, sex, or eye color, or any biometric identifiers on a license, including a finger print.”.

## **TITLE VI—MISCELLANEOUS**

### **SEC. 601. ENFORCEMENT BY STATE ATTORNEYS GENERAL.**

(a) IN GENERAL.—

(1) CIVIL ACTIONS.—In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by the engagement of any person in a practice that is prohibited under title I, II, or IV of this Act or under any amendment made by such a title, the State, as *parens patriae*, may bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction to—

(A) enjoin that practice;

1 (B) enforce compliance with such titles or  
2 such amendments;

3 (C) obtain damage, restitution, or other  
4 compensation on behalf of residents of the  
5 State; or

6 (D) obtain such other relief as the court  
7 may consider to be appropriate.

8 (2) NOTICE.—

9 (A) IN GENERAL.—Before filing an action  
10 under paragraph (1), the attorney general of  
11 the State involved shall provide to the Attorney  
12 General—

13 (i) written notice of the action; and

14 (ii) a copy of the complaint for the ac-  
15 tion.

16 (B) EXEMPTION.—

17 (i) IN GENERAL.—Subparagraph (A)  
18 shall not apply with respect to the filing of  
19 an action by an attorney general of a State  
20 under this subsection, if the State attorney  
21 general determines that it is not feasible to  
22 provide the notice described in such sub-  
23 paragraph before the filing of the action.

24 (ii) NOTIFICATION.—In an action de-  
25 scribed in clause (i), the attorney general

1 of a State shall provide notice and a copy  
2 of the complaint to the Attorney General  
3 at the same time as the State attorney  
4 general files the action.

5 (b) INTERVENTION.—

6 (1) IN GENERAL.—On receiving notice under  
7 subsection (a)(2), the Attorney General shall have  
8 the right to intervene in the action that is the sub-  
9 ject of the notice.

10 (2) EFFECT OF INTERVENTION.—If the Attor-  
11 ney General intervenes in an action under subsection  
12 (a), the Attorney General shall have the right to be  
13 heard with respect to any matter that arises in that  
14 action.

15 (c) CONSTRUCTION.—For purposes of bringing any  
16 civil action under subsection (a), nothing in this Act shall  
17 be construed to prevent an attorney general of a State  
18 from exercising the powers conferred on such attorney  
19 general by the laws of that State to—

20 (1) conduct investigations;

21 (2) administer oaths or affirmations; or

22 (3) compel the attendance of witnesses or the  
23 production of documentary and other evidence.

24 (d) ACTIONS BY THE ATTORNEY GENERAL OF THE  
25 UNITED STATES.—In any case in which an action is insti-



1 tuted by or on behalf of the Attorney General for violation  
 2 of a practice that is prohibited under title I, II, IV, or  
 3 V of this Act or under any amendment made by such a  
 4 title, no State may, during the pendency of that action,  
 5 institute an action under subsection (a) against any de-  
 6 fendant named in the complaint in that action for violation  
 7 of that practice.

8 (e) VENUE; SERVICE OF PROCESS.—

9 (1) VENUE.—Any action brought under sub-  
 10 section (a) may be brought in the district court of  
 11 the United States that meets applicable require-  
 12 ments relating to venue under section 1391 of title  
 13 28, United States Code.

14 (2) SERVICE OF PROCESS.—In an action  
 15 brought under subsection (a), process may be served  
 16 in any district in which the defendant—

17 (A) is an inhabitant; or

18 (B) may be found.

19 **SEC. 602. FEDERAL INJUNCTIVE AUTHORITY.**

20 In addition to any other enforcement authority con-  
 21 ferred under this Act or under an amendment made by  
 22 this Act, the Federal Government shall have injunctive au-  
 23 thority with respect to any violation of any provision of  
 24 title I, II, or IV of this Act or of any amendment made

- 1 by such a title, without regard to whether a public or pri-
- 2 vate entity violates such provision.

